YOU'VE GOT THE WRONG GUY! I'M INNOCENT! REVIEW OF THE ELEVENTH CIRCUIT'S HOLDING IN *SOSA V. MARTIN COUNTY*

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ABSTRACT

The Eleventh Circuit's recent en banc decision in *Sosa v. Martin County* held that a person's three-day detainment based on mistaken identity did not violate their substantive due process rights under the Fourteenth Amendment. Tracing the legal framework from the Supreme Court's decision in *Baker v. McCollan*, this Note explains how courts have diverged in analyzing claims of wrongful detention based on mistaken identity. The Note argues that, while the Eleventh Circuit majority correctly applied precedent, the ruling showcases the flaws of a rigid three-day bright-line rule, which grants law enforcement broad discretion to detain individuals. Instead, the Note supports a Fourth Amendment approach that evaluates the reasonableness of prolonged wrongful detentions based on mistaken identity under a totality-of-the-circumstances standard. This approach better protects wrongful detainees from a legal deprivation of their constitutional rights while still accounting for law enforcement interests.

INTRODUCTION

One Thursday morning, glancing at your watch, you realize that at the rate traffic is moving, you are going to be late for work. To save a few moments on your commute, you drive through a stop sign. Unfortunately for you, a police officer sees the traffic violation and pulls you over. After requesting your license and registration, the officer runs your name, John Smith, through their police car's mobile data terminal[1] discovering an

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1. Police cars are often equipped with mobile data terminals (MDTs), which police use to quickly access "state and federal databases providing information on vehicle license registration,

outstanding warrant for John Smith's arrest. Without taking any additional time to consider the clear dissimilarities between you and the suspected criminal John Smith, and despite your protests of innocence, you are arrested and detained for three days before your identity is verified. Instead of simply receiving a traffic violation ticket, you missed a day's work and spent most of the weekend in the precinct's office.

Typically, 42 U.S.C. § 1983 provides a civil remedy for individuals whose constitutional rights have been violated by state actors acting "under color of law." So, can you sue the officer, using 42 U.S.C. § 1983, for violating your constitutional right to be free from detention based on mistaken identity?[2] In the Eleventh Circuit, the answer is no.[3]

In *Sosa v. Martin County*, plaintiff David Sosa was arrested *twice* by defendant Martin County Sherriff's Department, both times based on the same twenty-two-year-old arrest warrant for a different David Sosa.[4] The first time, a deputy sheriff stopped Sosa for a traffic violation.[5] The officer ran Sosa's license and discovered the twenty-two-year-old arrest warrant.[6] Sosa repeatedly protested that the identifiers on the arrest warrant[7] did not match his characteristics.[8] Nevertheless, Sosa was arrested and detained for three hours.[9] Four years later, during another routine traffic stop, the officer found the same twenty-two-year-old arrest warrant.[10] Sosa again protested that he was not the David Sosa associated with the arrest warrant, even informing the officer of the prior mistaken detainment.[11] Sosa's pleas went

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driver's license registration, wants and warrants, [and] criminal histories." EUROPEAN INST. FOR CRIME PREVENTION AND CONTROL, COMPUTERIZATION IN THE MANAGEMENT OF THE CRIMINAL JUSTICE SYSTEM 289–90 (Richard Scherpenzeel, eds., 1996), https://www.ojp.gov/pdffiles1/Digitization/167617-167652NCJRS.pdf [https://perma.cc/EX4C-HKZJ].

2. What is later referred to as a "*Baker* violation."

3. *See* Sosa v. Martin Cnty., 57 F.4th 1297, 1301 (11th Cir. 2023), *cert. denied*, 144 S. Ct. 88 (2023); *see also* Brandon V. Stracener, Note, *It Wasn't Me—Unintended Targets of Arrest Warrants*, 105 CALIF. L. REV. 229, 231 (2017).

4. 57 F.4th at 1299.

5. *See id.*

6. *See id.*; *see also* EUROPEAN INST. FOR CRIME PREVENTION AND CONTROL, *supra* note 1, at 289–90 (explaining how licenses are processed through MDTs).

7. Identifiers on the arrest warrant included "the wanted man's date of birth, height, weight, social security number, and tattoo information." *Sosa*, 57 F.4th at 1299.

8. *See id.*

9. *See id.*

10. *See id.*

11. *See id.*

unheard and he was arrested again.[12] This time, however, Sosa's detention lasted from that Friday to the following Monday when he was fingerprinted—confirming that they detained the wrong David Sosa.[13] Sosa sought relief under 42 U.S.C. § 1983, alleging violations of the Fourth Amendment[14] and the Fourteenth Amendment's Due Process Clause.[15] The district court dismissed the complaint for failure to state a claim upon which relief could be granted.[16] The Eleventh Circuit initially affirmed in part and reversed in part, before voting in favor of vacating the panel's opinion and rehearing the case en banc.[17] Sitting en banc, the Eleventh Circuit held that Sosa's three-day detention did not violate his substantive due process rights under the Fourteenth Amendment.[18]

Part I examines the legal history leading to the *Sosa* decision. The road to *Sosa* started with *Baker v. McCollan*, where the Supreme Court held that a three-day detention based on mistaken identity could not violate due process.[19] Following *Baker*, the circuit courts split on whether the Supreme Court intended the constitutional right to be free from detention based on mistaken identity to be grounded in substantive due process, procedural due process, or in a more concrete constitutional provision like the Fourth Amendment.

After surveying the legal history, Part II returns to *Sosa v. Martin County* to argue that the majority's approach provided the better reading of *Baker* than the dissent. However, as a matter of first principle, this Note concludes that the Fourth Amendment offers a stronger framework for similar claims both as a matter of law and policy. As a matter of law, the Fourth Amendment's text offers an explicit process for deciding similar claims. And as a matter of policy, the Fourth Amendment's textual focus on a seizure's reasonableness gives judges flexibility to balance the rights of

12. *See id.*
13. *See id.*
14. *See* U.S. CONST. amend. IV ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.").
15. *See* U.S. CONST. amend. XIV, § 1 ("[N]or shall any State deprive any person of life, liberty, or property, without due process of law"); *see Sosa*, 57 F.4th at 1299.
16. *See Sosa*, 57 F.4th at 1299.
17. *See id.* at 1299–1300.
18. *See id.* at 1301.
19. *See id.* at 1301–02.

the innocent with the realities of law enforcement.

I. LEGAL HISTORY

A. Supreme Court Precedent: Baker v. McCollan

The Supreme Court first considered whether detainment based on mistaken identity constitutes a constitutional violation in *Baker v. McCollan*.[20] Linnie McCollan was pulled over by the police for running a red light.[21] When the police ran Linnie's name, a warrant for his arrest was discovered.[22] Unbeknownst to Linnie, his brother Leonard was previously arrested on narcotics charges while carrying a duplicate of Linnie's driver's license superimposed with Leornard's picture.[23] Linnie was arrested and detained for three days over New Year's weekend.[24] It was not until officials finally compared the image on the license to Linnie, that they realized their mistake and released him.[25]

Linnie brought a § 1983 action in the district court for damages against Sheriff Baker—the head of the local police department who arrested Linnie—alleging that the mistaken detention violated his Fourteenth Amendment due process rights.[26] The district court directed a verdict in favor of Baker without explanation.[27] Linnie appealed to the Fifth Circuit, who reversed and remanded to the district court for a new trial.[28] Baker then appealed to the Supreme Court.[29]

Chief Justice Rehnquist, writing for the majority, held that Linnie did not have a claim under the Fourteenth Amendment.[30] The Court first reasoned that Linnie was "indeed deprived of his liberty for a period of days,"[31] however, it was pursuant to a constitutionally valid warrant under

20. 443 U.S. 137, 140–41 (1979).
21. *Id.* at 141.
22. *See id.*
23. *See id.* at 140–41.
24. *See id.*
25. *See id.* at 141.
26. *See id.*
27. *Id.*
28. *See id.* at 141–42.
29. *See id.* at 142.
30. *See id.* at 144.
31. *Id.*

the Fourth Amendment.[32] The warrant reflected the police's probable-cause determination for Linnie's arrest.[33] Therefore, Linnie's detainment was not constitutionally entitled to a separate probable-cause determination pending trial.[34] The Court then acknowledged that:

> We may even assume, *arguendo*, that, depending on what procedures the State affords defendants following arrest and prior to actual trial, mere detention pursuant to a valid warrant but in the face of repeated protests of innocence will after the lapse of a certain amount of time deprive the accused of "liberty . . . without due process of law."[35]

However, the Court was "certain that a detention of three days over a New Year's weekend does not and could not amount to such a deprivation" of liberty without due process of law.[36] The Court reasoned that the Constitution does not prevent the innocent from being arrested and detained.[37] Instead, the Constitution only requires that such deprivations of liberty be made after due process of law.[38] Given that the Fourth

32. *See Baker*, 443 U.S. at 144. The Fourth Amendment states that a warrant for a person's arrest be made upon probable cause. *See* U.S. CONST. amend. IV. The state "must provide a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or *promptly after arrest*." Gerstein v. Pugh, 420 U.S. 103, 125 (1975) (emphasis added). The Rehnquist Court later clarified *Gerstein*'s "promptness" requirement as a bright-line rule, where pretrial detainment longer than forty-eight hours is presumptively unreasonable. *See* Cnty. of Riverside v. McLaughlin, 500 U.S. 44, 45 (1991).

33. *See Baker*, 443 U.S. at 143.

34. Chief Justice Rehnquist assumed that the police arresting the wrong person has no bearing on whether the police had probable cause to arrest that person, since the arrest was made pursuant to a valid warrant. *See id.* at 144. This is so because absent a challenge to the warrant's underlying validity, the facially valid warrant provided probable cause for the arrest even though the police arrested the wrong individual, as counterintuitive as that may seem. *See id.* And if the police had probable cause to make the arrest pursuant to a valid warrant, the Fourth Amendment does not require a separate probable-cause determination to justify detention pending trial. *See id.* In contrast, Justice Stevens argued in his dissent that, even when the police have probable cause to arrest, due process requires the police to justify continued detention in the face of repeated assertions of innocence. *See id.* at 149–150 (Stevens, J., dissenting).

35. *Id.* at 145 (majority opinion).

36. *Id.* Justice Blackmun argued in his concurrence that the Court did not foreclose a *Rochin* substantive due process analysis to an officer "who deliberately and repeatedly refused to check the identity of a complaining prisoner against readily available mug shots and fingerprints," only that the Court "reserve[d] judgment as to whether a more lengthy incarceration might deny due process." *Id.* at 148 (Blackmun, J., concurring).

37. *See id.* at 145 (majority opinion).

38. *See id.*

Amendment arrest requirements had been satisfied and Linnie's Sixth Amendment right to a speedy trial had not been violated, Linnie's three-day detainment could not violate the Fourteenth Amendment's Due Process Clause.[39] The Constitution does not require police officers who arrest a person on probable cause "to investigate independently every claim of innocence"; innocence determinations are ultimately made by a judge or jury, not by the police.[40] Therefore, if a police officer voluntarily chooses to investigate a claim of innocence, the Constitution does not require the investigation be "error-free."[41]

B. Baker Claims in Other Circuits

In the aftermath of *Baker*, the circuit courts split on how to apply the *Baker* Court's holding that a three-day detention based on mistaken identity did not violate due process. Did the Supreme Court mean that the three-day detainment could never violate substantive due process[42] or procedural due process?[43]

Substantive due process refers to the idea that the Fourteenth Amendment's Due Process Clause contains a substantive component, restraining state action that deprives life, liberty, or property without a compelling justification.[44] In the context of police misconduct, the Due Process Clause prohibits conduct that "shocks the conscience" or that shows "deliberate indifference" to an individual's constitutional rights.[45]

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39. *See id.* at 145–46.

40. *Id.*

41. *Id.* at 146.

42. Some courts and commentators have pointed to Justice Blackmun's concurrence in *Baker* to support the idea that the majority intended a substantive due process analysis. *See* Russo v. City of Bridgeport, 479 F.3d 196, 208 (2d Cir. 2007); *see also* Stracener, *supra* note 3, at 256.

43. Those who assume *Baker* intended a procedural due process focus on *Baker*'s rationale that once there is probable cause for an arrest, police are not required "to investigate independently every claim of innocence," which seems to focus on the procedural, rather than the substantive, aspects of due process. *See* Stracener, *supra* note 3, at 255 (quoting Baker v. McCollan, 443 U.S. 137, 145–46 (1979)).

44. *See generally* Erwin Chemerinsky, *Substantive Due Process*, 15 TOURO L. REV. 1501 (1999).

45. *See* Rochin v. California, 342 U.S. 165, 172 (1952) (holding that forcibly stomach-pumping a suspect's stomach to obtain evidence "shocks the conscience," in violation of the Fourteenth Amendment's Due Process Clause); *see also* Cannon v. Macon Cnty., 1 F.3d 1558, 1563 (11th Cir. 1993) (noting that the Eleventh Circuit requires a showing of "deliberate indifference" to establish a substantive due process violation in cases dealing with persons in state custody), *opinion modified on reh'g*, 15 F.3d 1022 (11th Cir. 1994). *But see* Graham v. Connor, 490 U.S. 386, 393–94 (1989) (requiring that excessive force claims be brought under an explicit constitutional provision (i.e., the Fourth

Procedural due process refers to the idea that the Fourteenth Amendment's Due Process Clause contains a procedural component allowing the state to deprive an individual of life, liberty, or property if the state provides a fair and timely process.[46] Determining whether the state has provided procedural due process prior to a deprivation of life, liberty, or property requires balancing (1) "the private interest that will be affected by the official action . . . the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards" weighed against (2) "the [g]overnment's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."[47]

The Eleventh and Sixth Circuits apply substantive due process to *Baker* claims, [48] whereas the Ninth Circuit applies procedural due process.[49] The Second and Third Circuits moved beyond *Baker* entirely, relying on a subsequent case, *Graham v. Connor*,[50] to apply a Fourth Amendment approach to *Baker* claims.[51]

i. The Eleventh & Sixth Circuit's Substantive Due Process Approach

Prior to *Sosa*, the Eleventh Circuit's major *Baker* claim case was *Cannon v. Macon County*.[52] Mary Cannon, then Mary Rene Parrott, was traveling with her boyfriend, Randy Cannon, and her three children, to her

Amendment), rather than *Rochin*'s substantive due process "shocks the conscience" test). Notwithstanding *Graham*, the Eleventh Circuit retains a substantive due process approach to detainment based on mistaken identity. *See Cannon*, 1 F.3d at 1563.

46. *See* Mathews v. Eldridge, 424 U.S. 319, 334–35 (1976) (emphasis added).

47. *Id.*

48. *See* Sosa v. Martin Cnty., 57 F.4th 1297, 1299, 1301 (11th Cir. 2023); Cannon v. Macon Cnty., 1 F.3d 1558, 1562 (11th Cir. 1993), *modified on reh'g*, 15 F.3d 1022 (11th Cir. 1994); Gray v. Cuyahoga Cnty. Sheriff's Dep't, 150 F.3d 579, 582–83 (6th Cir. 1998), *opinion amended on denial of reh'g*, 160 F.3d 276 (6th Cir. 1998).

49. *See* Lee v. City of Los Angeles, 250 F.3d 668, 683 (9th Cir. 2001); Garcia v. Cnty. of Riverside, 817 F.3d 635, 640–42 (9th Cir. 2016).

50. 490 U.S. 386, 394 (1989) (requiring that excessive force claims be raised under an explicit constitutional provision (i.e., the Fourth Amendment), rather than *Rochin*'s substantive due process "shocks the conscience" test).

51. *See* Russo v. City of Bridgeport, 479 F.3d 196, 208–09 (2d Cir. 2007); Berg v. Cnty. of Allegheny, 219 F.3d 261, 268–69 (3d Cir. 2000); Schneyder v. Smith, 653 F.3d 313, 321–22 (3d Cir. 2011).

52. 1 F.3d 1558 (11th Cir. 1993), *opinion modified on reh'g*, 15 F.3d 1022 (11th Cir. 1994).

mother's home in Georgia.[53] They ran out of money and spent the night at an Alabama rest area while awaiting financial assistance from their family in Georgia.[54] The following day, police noticed the family and offered to get them financial aid from a state agency.[55] The police ran a routine name check and found a Mary E. Parrot who was wanted for theft in Kentucky.[56] The police arrested Mary Cannon even though she repeatedly claimed innocence.[57] Mary E. Parrott's arrest report did not describe Mary Cannon at all. Nevertheless a fugitive warrant[58] was issued for Mary Cannon's arrest.[59] Cannon signed a waiver of extradition to Kentucky, and once there, they recognized that Mary Cannon was not Mary E. Parrott.[60] After a seven day incarceration, Cannon was released.[61] The Eleventh Circuit referenced *Baker*'s dicta that "detention pursuant to a valid warrant but in the face of repeated protests of innocence will, after the lapse of a certain amount of time, deprive the accused of liberty without due process of law."[62] Here, the Eleventh Circuit held that the police acted with "deliberate indifference"[63] to Mary Cannon's substantive due process rights by detaining her for seven days without taking "any steps to identify Cannon as the wanted fugitive."[64]

The Sixth Circuit, like the Eleventh Circuit, applies substantive due process to *Baker* claims. In *Gray v. Cuyahoga County Sheriff's Department*, Dwayne Gray, a Michigan resident, was stopped by the police in Cleveland, Ohio, and ticketed for driving without a license.[65] As punishment for the traffic offense, Gray was sentenced to five days in an Ohio jail.[66] After Gray

53. *See id.* at 1560.
54. *See id.*
55. *See id.*
56. *See id.*
57. *See id.*
58. A fugitive warrant is a "[w]arrant sent from another state when the suspect is believed to be in local jurisdiction." *See Warrant Type*, NAT'L CTR. FOR STATE CTS., https://www.ncsc.org/wdmtoolkit/business-processes/warrant-process-flow/warrant-types [https://perma.cc/5JQM-2FXB].
59. *See* Cannon v. Macon Cnty., 1 F.3d 1558, 1560–61 (11th Cir. 1993). *But see* Sosa v. Martin Cnty., 57 F.4th 1297, 1302 (11th Cir. 2023) (arguing that it is doubtful that Mary Cannon was even arrested on a valid warrant supported by probable cause).
60. *See Cannon*, 1 F.3d at 1561.
61. *See id*. at 1561–62 (referencing Baker v. McCollan, 443 U.S. 137, 145 (1979)).
62. *Id.* at 1562.
63. *Id.* at 1563. The Eleventh Circuit applies a "deliberate indifference" standard to cases where a person in state custody claims a violation of their substantive due process rights. *See id*.
64. *Id.* at 1564.
65. 150 F.3d 579, 580 (6th Cir. 1998).
66. *See id.*

was booked, the police found an outstanding parole-violator warrant for a "Dwayne Gray" in Michigan.[67] The judge suspended Gray's five-day sentence in Ohio, and he was extradited to Michigan.[68] Gray repeatedly protested that he was not the parole-violator.[69] The police even possessed a copy of a "Basic Information Sheet" with a picture of the parole-violator, who "looked nothing like [Gray]."[70] Gray waived the extradition process and went to the Michigan prison where his fingerprints were matched against the parole-violator's, confirming his innocence.[71] After forty-one days of incarceration, Gray was released.[72] The Sixth Circuit noted that while *Baker* held that a three-day detainment could not violate due process, the dicta in *Baker* suggested that an indefinite detainment would, at some point, violate due process.[73] The Sixth Circuit held that a forty-one day detainment could violate substantive due process and remanded for a determination of whether the police "acted with something akin to deliberate indifference" by failing to corroborate that they had the right Dwayne Gray.[74]

ii. The Ninth Circuit's Procedural Due Process Approach

The Ninth Circuit applies a procedural due process analysis to *Baker* claims. In *Lee v. City of Los Angeles*,[75] the Los Angeles Police Department (LAPD) arrested Mary Sanders Lee's son, Kerry Sanders, who lived with a mental disability.[76] He was arrested under a fugitive warrant for a Robert Sanders of New York.[77] New York State Department of Correctional Services provided the LAPD with Robert Sanders's identification packet, yet the LAPD failed to verify that Kerry Sanders was, in fact, Robert Sanders—which he was not.[78] The LAPD also failed to notice Kerry

67. *See id.*
68. *See id.*
69. *See id.*
70. *Id.*
71. *See id.* at 581.
72. *See id.* at 581–82.
73. *See id.*
74. *Id.* at 582–83 (citing Cannon v. Macon Cnty., 1 F.3d 1558, 1563 (11th Cir. 1993)) (explaining that the "deliberate indifference" standard governs substantive due process claims).
75. 250 F.3d 668 (9th Cir. 2001).
76. *Id.* at 677.
77. *See id.*
78. *See id.* at 678.

Sanders's history of institutionalization for chronic schizophrenia even though his "mental incapacity [was] obvious."[79] After a one-day detainment, an extradition hearing was held and the court extradited Kerry Sanders to New York.[80] When Kerry Sanders arrived in New York, correctional officials also failed to verify his identity.[81] Lee, Kerry Sanders's mother and conservator, repeatedly contacted the LAPD about Kerry Sanders's location, beginning shortly after his initial arrest.[82] Each time, the LAPD claimed his location was unknown.[83] Kerry Sanders was detained for two years until the real Robert Sanders was arrested in another jurisdiction, making the mistaken detainment irrefutable.[84] The Ninth Circuit—citing *Baker*'s dicta that an indefinite detainment would, at some point, violate due process[85]—held that the LAPD failed to provide Kerry Sanders with "minimum due process appropriate to the circumstances to ensure that [his] liberty [was] not arbitrarily abrogated."[86] Responding to the argument that the extradition hearing after a one-day detainment satisfied procedural due process, the Ninth Circuit stated that:

> Although the Supreme Court held in *Baker* that the arrestee's mistaken incarceration on a facially valid warrant for three days in that case did not amount to a deprivation of due process, the Court stated that the mistaken incarceration of an individual in other circumstances may violate his or her right to due process "after the lapse of a certain amount of time," "depending on what procedures the State affords defendant [ ] following arrest and prior to trial."[87]

The Ninth Circuit also distinguished *Lee* from *Baker*, explaining that Kerry Sanders's obvious mental incapacitation compelled a finding of no

79. *Id.* (internal quotation marks omitted).
80. *See id.* at 678, 684.
81. *See id.* at 678.
82. *See id.*
83. *See id.* Kerry Sanders's mother sued for violation of "Kerry Sanders's and his mother's right to familial association under both the First and Fourteenth Amendments." *Id.* at 686.
84. *See id.*
85. *See id.* at 683 (citing Baker v. McCollan, 443 U.S. 443, 145 (1979)).
86. *Id.* at 684 (alterations in original) (quoting Oviatt v. Pearce, 954 F.2d 1470, 1475 (9th Cir. 1992)).
87. *Id.* (quoting Baker v. McCollan, 443 U.S. 137, 144–45 (1979)).

probable cause for the initial detainment, unlike *Baker* where there was probable cause for Linnie's initial, albeit mistaken, detainment.[88] And since there was no probable cause here for the initial arrest, the police's "conscious failure to train their employees in the *procedures* necessary to avoid the mistaken extradition and incarceration of mentally incapacitated persons like Kerry Sanders" violated his procedural due process rights consistent with *Baker*.[89]

iii. The Second & Third Circuit's Fourth Amendment Approach

The Second Circuit, interpreting *Graham v. Connor* broadly,[90] moved beyond *Baker*, applying the Fourth Amendment to *Baker* claims.[91] In *Russo*

88. *See id.* at 684; *cf.* Petition for Writ of Certiorari, Sosa v. Martin Cnty., 144 S. Ct. 88 (2023) (No. 22-1145), at 17. In the Petition for Writ of Certiorari for *Sosa*, petitioners argued that *Lee*'s reading of *Baker* supports the idea that *Baker* "did not create some 72-hour safe harbor." Instead, even a one-day detainment prior to an extradition hearing could violate due process. However, this argument fails to consider the *Lee* court's distinguishing of *Baker* as an instance where there was probable cause for the initial arrest. Therefore, a three-day detainment could not violate due process, while in *Lee* (since there was no probable cause for the initial arrest), even a one-day detainment could violate due process.

89. Lee v. City of Los Angeles, 250 F.3d 668, 684 (9th Cir. 2001) (emphasis added). Following *Lee*, the Ninth Circuit explicitly applied a *Mathews* procedural due process framework to *Baker* claims. *See* Mathews v. Eldridge, 424 U.S. 319, 334–35 (1976) (stating the multi-factor test for evaluating procedural due process claims). *See, e.g.*, Fairley v. Luman, 281 F.3d 913, 918 (9th Cir. 2002) (holding that a twelve-day detainment, "[i]n light of the importance of [Fairley]'s liberty interest, the significant risk of deprivation of that interest through the City's warrant procedures, and the minimum burden to the City of instituting readily available procedures for decreasing the risk of erroneous detention, the procedures afforded by the City to [Fairley] failed to provide him due process under the Fourteenth Amendment."). More recently, the Ninth Circuit has stated that there are at least two situations where a *Baker* claim might contain a procedural due process violation. *See* Garcia v. Cnty. of Riverside, 817 F.3d 635, 640 (9th Cir. 2016) (quoting Rivera v. Cnty. of Los Angeles, 745 F.3d 384, 391 (9th Cir. 2014) (stating that "[e]ither '(1) the circumstances indicated to the defendants that further investigation was warranted, or (2) the defendants denied the plaintiff access to the courts for an extended period of time.'"). Some have criticized the Ninth Circuit's procedural due process approach as providing an insufficient remedy for the injury of being mistakenly detained. *See* Stracener, *supra* note 3, at 256. So long as the police provide *some* procedural safeguards, either by investigating a detainee's protest of innocence or by providing a hearing, a person can be repeatedly detained based on mistaken identity without redress. *Id.*

90. 490 U.S. 386, 393–94 (1989) (requiring that excessive force claims be brought under an explicit constitutional provision (i.e., the Fourth Amendment), rather than *Rochin*'s substantive due process "shocks the conscience" test).

91. The Second and Third Circuit apply *Graham* broadly by relocating substantive due process claims, like *Baker* claims, under more explicit constitutional provisions. *See* Russo v. City of Bridgeport, 479 F.3d 196, 208 (2d Cir. 2007); *see also* Berg v. Cnty. of Allegheny, 219 F.3d 261, 268–69 (3d Cir. 2000). In contrast, in the absence of explicit guidance from the Supreme Court, the Eleventh and Sixth Circuits narrowly read *Graham* as relocating only certain excessive force claims, and not *Baker* claims,

v. City of Bridgeport,[92] the police arrested and imprisoned plaintiff Christopher Russo for allegedly committing an armed robbery at a gas station.[93] The prosecutors based his detainment on a still frame of the robber's face from the gas station's security tape, without viewing the security tape itself.[94] Russo had visible tattoos that clearly did not match the robber in the tape.[95] He also did not match other physical characteristics of the armed robber in the tape.[96] Russo was "younger, taller, balder, and with different colored hair than the person whom the victim had described to the police."[97] Nevertheless, the police and prosecutor *continued* to insist, even during the months that they exclusively possessed the video, that Russo was the alleged robber.[98] Over seven months later, the prosecutor *finally* viewed the surveillance video, which showed that Russo was clearly not the armed robber.[99] The Second Circuit held that the 217-day detainment was an unreasonable seizure by the police in violation of the Fourth Amendment.[100] The Second Circuit reasoned that, in light of *Graham*, *Rochin*'s substantive due process "shock the conscience" [101] test "must now be understood as a crucial feature going to the unreasonableness of the seizure."[102] Therefore, the police and prosecutor's "deliberate indifference" to Russo's constitutional right to be free from unreasonable seizures for over seven months shocked the conscience in violation of the Fourth Amendment.[103]

The Third Circuit, in *Berg v. County of Allegheny*,[104] also analyzed

under the Fourth Amendment. *See, e.g.*, Corbitt v. Vickers, 929 F.3d 1304, 1313 (11th Cir. 2019) (finding that *Graham* only relocates claims of excessive force during an arrest, while substantive due process still applies to claims of excessive force against pretrial detainees); *see also* Burgess v. Fischer, 735 F.3d 462, 472 (6th Cir. 2013).

92. 479 F.3d 196 (2d Cir. 2007).
93. *See id.* at 199.
94. *See id.* at 201–02.
95. *See id.* at 199–200.
96. *See id.* at 200.
97. *See id.*
98. *See id.* at 201–02.
99. *See id.*
100. *See id.* at 209.
101. *See* Rochin v. California, 342 U.S. 165, 172 (1952) (holding that forcibly pumping a suspect's stomach to obtain evidence "shocks the conscience," in violation of the Fourteenth Amendment's Due Process Clause).
102. Russo v. City of Bridgeport, 479 F.3d 196, 210 (2d Cir. 2007) (internal quotation marks omitted).
103. *Id.* at 210.
104. 219 F.3d 261 (3d Cir. 2000).

Baker claims under the Fourth Amendment.[105] In *Berg*, defendants Allegheny County Adult Probation Services requested an arrest warrant for a parole violator, Paul Banks.[106] However, when the warrant clerk drafted the warrant, she accidently entered the criminal complaint number of plaintiff Raymond A. Berg Jr., "who three years earlier had completed a six-month parole term for driving under the influence."[107] Predictably, none of Berg's personal information matched Bank's Arrest Warrant Information sheet the police provided.[108] Nevertheless, the officer proceeded to Berg's house, who at the time was hosting a "pre-New Year's Eve party."[109] Berg protested his arrest, displaying his driver's license to confirm that he was not a parolee.[110] Still, Berg was arrested and detained over the holiday weekend for a total of five days.[111] The Third Circuit held that the district court had improperly granted summary judgment to Allegheny County.[112] The warrant could not provide a basis for probable cause when Berg's arrest was arguably an unreasonable seizure in violation of the Fourth Amendment.[113] Berg's arrest was arguably an unreasonable seizure because the police failed to reasonably inquire further after Berg displayed his license and documentation showing that his probation had been completed.[114] At that point, the police should have recognized that something was amiss. Citing *Baker*, the Third Circuit reasoned that even though an officer is not "required by the Constitution to investigate independently every claim of innocence,"[115] still, "an apparently valid warrant does not render an officer immune from suit if his reliance on it is unreasonable in light of the relevant circumstances."[116] Therefore, the

105. *See id.* at 268–69 (citing Graham v. Connor, 490 U.S. 386, 394 (1989)) (stating that "when government behavior is governed by a specific constitutional amendment, due process analysis is inappropriate."); *see also* Schneyder v. Smith, 653 F.3d 313, 315–18 (3d Cir. 2011) (applying the Fourth Amendment to a noncompliant material witness who was detained for forty-eight days past when the witness was supposed to be released).

106. *See* Berg v. Cnty. of Allegheny, 219 F.3d 261, 266 (3d Cir. 2000).

107. *Id.* at 266–67.

108. *See id.*

109. *See id.* at 267.

110. *See id.*

111. *See id.* at 268.

112. *See id.* at 271.

113. *See id.* at 273–74.

114. *See id.* at 273.

115. *Id.* at 272–73 (internal quotation marks omitted) (quoting Baker v. McCollan, 443 U.S. 137, 145-146 (1979)).

116. *Id.* at 273.

failure to inquire further arguably made the arrest and subsequent detainment an unreasonable seizure in violation of the Fourth Amendment, and the Third Circuit reversed and remanded to the district court to make the necessary factual findings.[117]

II. ANALYSIS OF THE ELEVENTH CIRCUIT'S CASE, *SOSA V. MARTIN COUNTY*

A. The Majority's Approach

In *Sosa v. Martin County*,[118] with *Baker* and *Cannon* in the background, Judge William Pryor, writing for the majority, explained that "*Baker* squarely controls this case."[119] Sosa's three-day detention did not violate his substantive due-process rights.[120] For Judge Pryor, "[u]nder *Baker*, no violation of due process occurs if a detainee's arrest warrant is valid and his detention lasts an amount of time no more than the three days that Linnie was detained."[121] Sosa's arrest and detainment satisfied both conditions, as the Eleventh Circuit noted:

> Like Linnie, Sosa was arrested pursuant to a valid warrant supported by probable cause under the Fourth Amendment. And like Linnie, who was held from Saturday to Tuesday, Sosa was held for three days from Friday to Monday. So, under *Baker*, Sosa has no claim for a violation of his due-process rights.[122]

In *Cannon*, however, neither of *Baker*'s conditions were met.[123] Although the *Cannon* court never explicitly stated that the police lacked probable cause for Cannon's arrest, since the warrant's information did not at all match Cannon's personal and physical identifiers—the warrant's

117. *See id.* at 273–74.
118. 57 F.4th 1297 (11th Cir. 2023).
119. *Id*. at 1298–99.
120. *See id*. at 1303.
121. *Id.* at 1301 (citing Baker v. McCollan, 443 U.S. 137, 144 (1979)); *see also* Stalter v. State, 86 P.3d 1159, 1164 (Wash. 2004) (reading *Baker*, like the Eleventh Circuit, as imposing a bright-line rule that three-day mistaken-identity detentions, based upon probable cause for the initial arrest, cannot violate due process).
122. *Id.* at 1301 (internal citations omitted).
123. *See Sosa*, 57 F.4th at 1302.

underlying validity was constitutionally suspect.[124] Further, the police detained Cannon for several days—more than twice as long as Sosa's detainment,[125] and well beyond *Baker*'s holding "that a detention of three days over a New Year's weekend does not and could not" amount to a deprivation of liberty without due process of law.[126] The Eleventh Circuit therefore held, consistent with *Baker* and *Cannon*, that Sosa's detention did not violate his substantive due process rights.[127]

B. The Dissent's Approach

Judge Robin Rosenbaum, in dissent, vehemently argued that the majority misread precedent with profound consequences for Sosa and society.[128] Judge Rosenbaum stated:

> Faced with this sequence of events, my colleagues in the majority wring their hands and say too bad for Sosa but insist the Constitution allows it . . . . According to these judges, no constitutional violation occurs until the detained person's *speedy-trial* rights are violated—that is, about *a year or more later*. A year in jail! And for no reason other than that law-enforcement officials refused to engage in less than a minute of work to confirm their prisoner's identity.[129]

According to Judge Rosenbaum, the *Baker* Court never established a bright-line rule that a three-day detention based on mistaken identity could *not* violate due process.[130] After all, why would the *Baker* Court leave an "aircraft-carrier-sized loophole" in the Due Process Clause?[131] Rather, under the specific facts of *Baker*, the Supreme Court held that Linnie's three-day detainment did not violate due process.[132] Instead of a bright-line

124. *See id.*
125. *Compare id.* at 1301 (Sosa was held for three days) *with id.* at 1303 (Cannon was held for seven days).
126. Baker v. McCollan, 443 U.S. 137, 145 (1979).
127. *See Sosa*, 57 F.4th at 1303.
128. *See id.* at 1309 (Rosenbaum, J., dissenting).
129. *Id.* (citations omitted).
130. *See id.* at 1318.
131. *Id.* at 1309.
132. *See id.* at 1318.

rule, Justice Rehnquist's use of circumstantial language, indicates that *Baker* established a reasonableness test that looks to the totality-of-the-circumstances.[133] Although noting that the language "depending on what procedures the State affords defendants"[134] was dicta,[135] Judge Rosenbaum stated that the Eleventh Circuit applied this dicta in *Cannon* to hold that Cannon's seven-day detainment violated due process.[136] Therefore, applying a totality-of-the-circumstances test, Judge Rosenbaum found that Sosa's three-day detainment was unreasonable and violated due process.[137]

Judge Rosenbaum considered various factual differences between *Baker* and *Sosa* in determining that Sosa's three-day detainment violated due process. First, technological innovation since *Baker* has turned the burdensome process of confirming a detainee's identity into merely "pressing a button on the computer to see if a detainee's fingerprints matched a wanted person's fingerprints."[138] Second, in *Baker*, Linnie was set up by his brother who purposely intended to confuse the police, while Sosa was arrested because his name matched someone with an outstanding warrant.[139] Third, in *Baker*, Linnie's arrest occurred two months after his brother skipped bail, while Sosa was arrested based on an over twenty-year-old warrant.[140] Fourth, Linnie's brother purposely used a fraudulent license with Linnie's photo on it, which became the photo identifier in the warrant, while none of Sosa's identifiers matched the wanted David Sosa.[141] Fifth, because "Linnie McCollan" is a less common name than "David Sosa," the police reasonably should have realized that perhaps this was not the David Sosa who was subject to the arrest warrant.[142] Sixth, Linnie was detained

133. *Id.* at 1319–21. Examples of circumstantial language include statements such as "we are quite certain that a detention of three days *over a New Year's weekend* does not and could not amount to such a deprivation," and that at some point "*depending on what procedures* the State affords defendants . . . mere detention pursuant to a valid warrant but in the face of repeated protests of innocence violates due process." *Id.* (internal quotation marks omitted) (emphasis added) (quoting Baker v. McCollan, 443 U.S. 137, 145 (1979)).

134. *Id.* at 1320 (quoting Baker v. McCollan, 443 U.S. 137, 145 (1979)).

135. *Id.* at 1320 n.8 ("Of course, I recognize that this statement is dicta. But as we have explained, 'there is dicta and then there is dicta, and then there is Supreme Court dicta.'") (citing Schwab v. Crosby, 451 F.3d 1308, 1325 (11th Cir. 2006)).

136. *See id.*

137. *See id.* at 1323.

138. *Id.* at 1324.

139. *See id.* at 1324–25.

140. *See id.*

141. *See id.*

142. *See id.*

over a holiday weekend, while Sosa was detained over an ordinary weekend.[143] Therefore, based on the totality of these circumstances, "we can reach only one conclusion: that the officers violated Sosa's constitutional rights."[144]

C. Adherence to Precedent—Why the Majority Got it Right

Judge Pryor and the majority present the better reading of the precedent set by *Baker*. While the circuit split reveals the unsettled nature of Justice Rehnquist's holding in *Baker* that "a detention of three days over a New Year's weekend does not and could not amount to such a deprivation" of liberty without due process of law,[145] the dissent's proposition in *Sosa*, that Justice Rehnquist intended a totality-of-the-circumstances approach, is flawed.

First, if Justice Rehnquist intended to apply a totality-of-the-circumstances approach, he could have stated it explicitly,[146] as he did in other cases.[147] The majority's approach is simply that Justice Rehnquist intended exactly what he wrote: A bright-line rule that a three-day detention made upon probable cause cannot violate due process.[148] The dissent inferring an unstated totality-of-the-circumstances approach based on *Baker*'s sparing use of circumstantial language, attempts to force the flexibility of the Second and Third Circuit's Fourth Amendment approach into Eleventh Circuit precedent without, in fact, following the Eleventh Circuit's precedent.

Second, under a broader view of Supreme Court precedent, a three-day bright-line rule is a reasonable interpretation of *Baker*. Four years prior to

143. *See id.*
144. *Id.* at 1326.
145. Baker v. McCollan, 443 U.S. 137, 145 (1979).
146. *See* Sosa v. Martin Cnty., 57 F.4th 1297, 1301 (11th Cir. 2023) (internal citation omitted) ("Nor did the Court rely on the unstated limiting principle of reasonableness that our dissenting colleague has discerned from *Baker*.").
147. *See, e.g.*, Illinois v. Gates, 462 U.S. 213, 233 (1983) (explicitly applying a totality-of-the-circumstances approach for relying on a tipster for the probable cause determination).
148. *But see* Kathryn McIlroy, Comment, *Having the "Right" Name: Examining the Eleventh Circuit's Decision Concerning Detention of Arrestees Based on Mistaken Identity*, UNIV. CIN. L. REV. BLOG, March 30, 2023, https://uclawreview.org/2023/03/30/examining-the-eleventh-circuits-decision-concerning-detention-of-arrestees-based-on-mistaken-identity/ [https://perma.cc/LT3N-D2F4] (arguing that the dissent's reading of *Baker* is persuasive).

Baker, the Supreme Court in *Gerstein v. Pugh*[149] held that the Fourth Amendment requires police to provide a probable cause determination for detaining an individual ideally before, but if not, "*promptly after arrest*."[150] The Rehnquist Court later clarified *Gerstein*'s "promptness" requirement as a bright-line rule, where pre-trial detainment longer than forty-eight hours without a probable cause determination is presumptively unreasonable.[151] If *detainment without probable cause for up to forty-eight hours* does not constitute an unreasonable seizure under the Fourth Amendment, it stands to reason that a seventy-two hour detention made upon probable cause *cannot* violate due-process, at least to the extent that such a detainment does not shock the conscience.

Third, Justice Rehnquist generally did not favor a broad conception of substantive due process designed to protect the innocent from state overreach and abuse.[152] For Justice Rehnquist, "the Court has always been reluctant to expand the concept of substantive due process *because guideposts for responsible decisionmaking in this unchartered area are scarce and open-ended*."[153] To the extent that Justice Rehnquist intended a substantive due process analysis in *Baker*, it is more reasonable that he intended a three-day bright-line rule and not an unstated, flexible totality-of-the-circumstances approach.[154]

149. 420 U.S. 103 (1975).

150. *Id.* at 125 (emphasis added).

151. *See* Cnty. of Riverside v. McLaughlin, 500 U.S. 44, 45 (1991). Some commentators have argued that the forty-eight-hour hold has been abused by police to regularly detain suspected wrongdoers for two days to conduct further investigation without providing a probable cause determination. *See* Steven J. Mulroy, *"Hold" On: The Remarkably Resilient, Constitutionally Dubious 48-Hour Hold*, 63 CASE W. RES. L. REV. 815, 842–45 (2013).

152. *See, e.g.*, Albright v. Oliver, 510 U.S. 266, 268 (1994) (refusing to recognize a substantive due process right "to be free from criminal prosecution except upon probable cause."); *see also* James Lank, *The Graham Doctrine as a Weapon Against Substantive Due Process: Albright v. Oliver, 114 S. Ct. 807 (1994).*, 17 HARV. J.L. & PUB. POL'Y 918, 921 (1994) (explaining that *Albright* was focused, for one, on "judicial restraint in expanding the scope of substantive due process").

153. *Albright*, 510 U.S. at 271–72 (emphasis added) (citing Collins v. City of Harker Heights, 503 U.S. 115, 125 (1992)); *see also* Richard A. Brisbin, Jr. & Edward V. Heck, *The Battle over Strict Scrutiny: Coalitional Conflict in the Rehnquist Court*, 32 SANTA CLARA L. REV. 1049, 1098 (1992) (explaining that Justice Rehnquist had a narrow conception of substantive due process and sought to further narrow the doctrine's application).

154. In fact, Justice Blackmun's *Baker* concurrence argued that it was not that a *Baker* claim could not violate substantive due process, rather only that a three-day detention does not "shock the conscience." *See* Baker v. McCollan, 443 U.S. 137, 147 (1979) (Blackmun J., concurring) (citing Palko v. Connecticut, 302 U.S. 319, 325 (1937)).

D. Relocating Baker Under the Fourth Amendment—The Right Choice

The Supreme Court should explicitly relocate *Baker* claims under the Fourth Amendment,[155] because while the *Sosa* majority had the better reading of *Baker*, *Baker* is poor law and poor policy.

Baker is poor law because rather than ground mistaken detention claims on an explicit constitutional provision (i.e., the Fourth Amendment), the Court grounded Baker's right in the controversial, amorphous doctrine of substantive due process.[156] The Fourth Amendment's explicit prohibition of "unreasonable seizures," and its requirement that warrants be supported by probable cause, directly address situations where individuals are arrested for a crime they did not commit and are then detained for an unfairly long time.[157]

Baker is also poor policy. On the surface, a three-day bright-line rule might seem reasonable. First, police officers may not be willing or able to second guess a judge-issued warrant just because the detainee claims innocence. A three-day bright-line rule gives police sufficient time to investigate a detainee's persistent claims of innocence. Second, once a judge signs a warrant, police should not be second guessing the order to detain the person that they thought was the person on the warrant. Third, a three-day bright-line rule might be realistic in situations where it is not necessarily feasible to get the defendant before a judge within three days. For instance, Linnie's "detention of three days over a New Year's weekend."[158] In such a situation, the police and records department might be severely understaffed, and it may be unrealistic to guarantee they had the right detainee within three days. Perhaps then, a three-day bright-line approach might be good policy.

While all that may be true, a three-day bright-line rule remains poor policy. A bright-line rule gives the state a seventy-two-hour carte blanche period to detain an individual upon probable cause who repeatedly protests their innocence. Why should a twenty-four-hour or even a four-hour

155. Unfortunately, the Supreme Court declined to grant certiorari. *See* Sosa v. Martin Cnty., 57 F.4th 1297, 1301 (11th Cir. 2023), *cert. denied*, 114 S. Ct. 88 (2023).

156. *See id.* at 1305–07 (Newsom J., concurring) (summarizing the controversial and amorphous nature of substantive due process in judicial decision making).

157. *See id.* at 1307 (Newsom J., concurring).

158. Baker v. McCollan, 443 U.S. 137, 145 (1979).

detention not "shock the conscience" in those specific circumstances where, after repeated pleas of innocence, a moment's glance or a single computer search would resolve any confusion? Relocating *Baker* under the Fourth Amendment would allow courts to consider the totality-of-the-circumstances and focus on the reasonableness of a three-day detainment,[159] or even a three-hour detainment, rather than the bright-line rule that "a detention of three days . . . does not and could not amount to such a deprivation" of liberty without due process of law.[160] A totality-of-the-circumstances approach allows judges to consider the circumstances under which the person was detained, and whether it was reasonable for the police to second-guess their identification of the detainee listed on the warrant. The totality-of-the-circumstances approach also considers the day of the week, the time of the year, staffing, and accessibility of the pertinent records. Such a change of focus better balances the rights of the innocent with the realities of law enforcement.

CONCLUSION

The result in *Sosa*[161] seems terrifying, and rightfully so. Anyone could be the next David Sosa.[162] What begins as a simple traffic violation on the way to work or after dropping the kids off at school could lead to detention—all because the officer failed to ensure that the person being arrested upon probable cause is, in fact, the wanted person. To make matters worse, even after an identity is verified and release occurs, one may have no recourse against the state if the detention lasted less than three days. Nevertheless, analyzing the legal history that led to *Sosa*, hopefully encourages a greater appreciation for the issues that these jurists were facing. In our system of law, innocence determinations are made by judge and jury.[163] The *Baker* Court and the circuit courts had to consider whether

159. *See Sosa*, 57 F.4th at 1329–32 (Rosenbaum, J., dissenting) (arguing that *Baker* should be relocated under the Fourth Amendment); *see also McIlroy*, *supra* note 148 (arguing that the Fourth Amendment offers innocent individuals greater protection from mistaken detainment).

160. *See Sosa*, 57 F.4th at 1302 (partially citing *Baker*, 443 U.S. at 145).

161. *See id*. at 1303.

162. *Cf.* Malia Castillo, *Ghost Warrants and Mistaken Arrests: How They Haunt the Marginalized*, 40 CHICANA/O LATINA/O L. REV. 83, 95–108 (2024) (describing how the current state of the law particularly impacts marginalized communities).

163. *See Baker*, 443 U.S. at 146.

we could still hold the state responsible for not making a "preliminary" innocence determination, a determination not necessarily within their purview when they decide to detain an individual upon probable cause. *Baker* and *Sosa* present a more hardline view that insulates the state for at most seventy-two-hours. However, as has been argued, the Second and Third Circuit's approach, relocating *Baker* claims under the Fourth Amendment, provides a more compelling foundation for balancing the rights of the innocent against burdening law enforcement with making innocence determinations.